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IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.196/2006.
In
S.B. CIVIL WRIT PETITION NO.3825/1997.

M.D.S. University, Ajmer.
Vs.
Munna Lal Sain and anr.

Date of Order:- August 2 2007.

HON'BLE THE ACTING CHIEF JUSTICE MR.J.M. PANCHAL
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. R.D. Rastogi for the appellant.
Mr. Mahendra Shah for respondent No.1.

BY THE COURT (Per: J.M. Panchal, Actg.CJ.):

The instant appeal filed under Rule 134 of the High Court of Judicature for Rajasthan Rules, 1952 is directed against the order dated August 23, 2005 rendered by the learned Single Judge in S.B. Civil Writ Petition No.3825/1997 by which award of the Labour Court reinstating the Respondent No.1 in service with back wages, is confirmed.

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2) The respondent No.1 was employed with the appellant on April 18, 1988. His services were terminated on January 1, 1989. His case was that his retrenchment was contrary to the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter to be referred in short as, the "Act of 1947"). Therefore, he filed writ petition being S.B. Civil Writ Petition No.695/1989 challenging his retrenchment. The said writ petition was allowed by the learned Single Judge of this Court. Feeling aggrieved, the appellant preferred an appeal before the Division Bench which was allowed. After dismissal of his petition, the respondent No.1 raised an industrial dispute which was referred to the Labour Court for adjudication. Before the Labour Court, evidence was adduced by the parties. The case of the respondent No.1 was that he had rendered service for more than 240 days as he was made to work on Sundays and Holidays also. Thereupon, the Labour Court had called upon the appellant to produce necessary documents/vouchers indicating payment of wages made to respondent No.1 for working on Sundays and Holidays also. In spite of the

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direction given by the court, the appellant did not produce any document before the Labour Court. Therefore, the Labour Court raised an adverse inference as provided by Section 114 of the Indian Evidence Act, 1872 against the appellant and came to the conclusion that it was proved by respondent No.1 that he had worked continuously for a period of more than 240 days. It was noticed by the Labour Court that before effecting retrenchment of respondent No.1, the appellant had failed to comply with the provisions of Sections 25F, 25G & 25H of the Act of 1947. Under the circumstances, the Labour Court directed reinstatement of respondent No.1 in service with consequential benefits.

3) Feeling aggrieved, the appellant preferred writ petition under Article 227 of the Constitution of India. The same has been rejected by the learned Single Judge vide order dated August 23, 2005 which has given rise to the instant appeal.

4) This Court has heard learned counsel for the parties and perused the material on record.

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5) The contention that the respondent No.1 had not completed service of more than 240 days in previous year and, therefore, the order passed by the learned Single Judge should be set-aside, is devoid of merits. On appreciation of evidence, the Labour Court as well as the learned Single Judge have come to the conclusion that it was proved satisfactorily by respondent No.1 that he had worked continuously for a period of more than 240 days in the previous year. As noticed earlier, the case of respondent No.1 was that he was made to work on Sundays and Holidays also and the appellant had failed to produce the necessary evidence before the Labour Court inspite of the direction given by the Labour Court. Therefore, the Labour Court was justified in drawing an adverse inference against the appellant. The view taken by the Labour Court which is affirmed by the learned Single Judge is in consonance with the principle laid down by the Supreme Court in Gopal Krishanaji Ketkar Vs. Mohamed Haji Latif : AIR 1968 SC 1413.

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6) On re-consideration of evidence, this Court finds that no case is made out by the learned counsel for the appellant to take a view different than the one taken by the learned Single Judge on appreciation of evidence.

7) The appeal therefore, deserves to be dismissed summarily.

For the foregoing reasons, the appeal fails and is summarily dismissed.

(MOHAMMAD RAFIQ), J. (J.M. PANCHAL), Actg. CJ.

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